

MINUTES OF
THE PARTNERSHIPS AND LIMITED LIABILITY COMPANIES COMMITTEE
OF THE BUSINESS LAW SECTION OF THE STATE BAR OF CALIFORNIA

March 5, 2004

Joint Meeting with Corporations Committee

10:30 a.m.

The Committee meeting was held in Room 385 of the Secretary of State's office. In attendance were Michelle Lipsey, Connie Christensen and Pam Giarrizo of the secretary of State, Colleen McConnell and Tim Lebas, Department of Corporations, and Larry Doyle of the State Bar Office of Legislative Affairs. Dave Marion, Bradley Rogerson and Phil Jelsma attended on behalf of the Committee.

Connie Christensen spoke on the problems found with LP and LLC filings. Often, signature blocks are either incorrect or incomplete. For example, individuals signing for a Trust must include their name, Trustee for the Trust dated _____. To make amendments to existing Articles of Organization, a Statement of Information does not need to be filed prior to an amendment of the Articles.

Pam Giarrizo spoke on the new rules with respect to obtaining consent for LLC and LLP names. Generally, consents are only required if the Secretary of State's office is convinced that the entity it is a subsidiary or affiliate of an existing LLC or LLP. The Secretary of State's office no longer looks at the phonetic spelling or pronunciation in determining when consent is required.

Fax filings are accepted for all LLC and LPs, including fax filings of good standing certificates. Pam mentioned that the Secretary of State's office has requested an Attorney General's opinion as to whether or not they can accept Articles of Organization for an LLC if they believe it is a professional LLC. If the AG's opinion is that those decisions should be left to the individual licensing agencies, the Secretary of State's office will no longer look to the business of the LLC. Pam also mentioned that in SPE filings, often changes are required if the Articles limit the LLC's ability to dissolve, amend its Articles, convert or merge without the approval of the members. Typically, these Articles require the caveat "except as otherwise provided by law".

Michelle Lipsey then spoke on conversions. She reminded us that there is no expedite filing for conversions and pre-filing can only be 90 days in advance. Under California law, an entity cannot convert to a foreign LLC or corporation and conversions are not available to nonprofit entities. If a conversion is pursuant to foreign law, often the Secretary of State requires the relevant foreign law authority. In Articles of Conversion, the Secretary of State's office requires a percentage of the vote required as well as a statement of the interests outstanding. Under current law, a request for tax clearance is required for any conversion from an LLC, but failure to include a request for tax clearance does not preclude filing conversion documents.

Colleen McConnell reported on the electronic Section 25102(f) filing, as well as the fact that under Cal-Ez, copies of all Department of Corporations filings since the summer 2002 are available on line. The Department of Corporations has also established a call center for one-stop shopping. Colleen and Tim Labass reported on potential future legislation, including AB 2261 and 2520. The Corporations Committee's electronic communications proposal is in AB 1306 and the Franchise Law Committee's proposal to update the franchise requirements are in AB 29 and 21.

Tim Lebas reported that there are few problems created with the Department of Corporations pertaining to LLCs and LPs.

These minutes were prepared by Phil Jelsma on March 6, 2004.

Respectfully Submitted

Phillip L. Jelsma, Secretary